

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Valley Falls Station
Cumberland, Rhode Island 02464

Docket No. A2011-18

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

August 12, 2011

I. INTRODUCTION

On May 23, 2011, the Commission received a petition to review the Postal Service's decision to close the Valley Falls Station in Cumberland, Rhode Island (Valley Falls Station).¹ The Postal Service made its decision on February 24, 2011,² and communicated that decision to customers on or about May 6, 2011.³

On May 25, 2011, the Commission issued an order instituting the current review proceeding, appointing a Public Representative, and establishing a procedural schedule.⁴ On June 20, 2011, the Mayor of Cumberland, RI, filed correspondence requesting suspension of the closing of the station pending the outcome of these proceedings.⁵ The Commission denied that request.⁶ As a result, the Valley Falls Station closed on July 8, 2011. Petition, Exhibit 1.

¹ Petition for Review Received from Derrick Watson, May 23, 2011 (Petition).

² Final Determination to Close the Valley Falls, RI Classified Station Continue to Provide PO Box and Retail Service Through the Cumberland RI Classified Station, February 24, 2011. (Final Determination). The Final Determination was filed with the Commission on June 7, 2011. Notice of the United States Postal Service, June 7, 2011 (Postal Service Notice).

³ Petition, Exhibit 5; and Postal Service Notice at 4.

⁴ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 25, 2011 (Order No. 737).

⁵ Letter from Mayor Daniel J. McKee to Commission, June 20, 2011.

⁶ Order Denying Application for Suspension, July 8, 2011 (Order No. 756).

On July 15, 2011, the Postal Service filed the Administrative Record (AR) and requested non-public treatment.⁷ Thereafter, on July 29, 2011, the Commission granted a motion to make public certain information contained in the Administrative Record.⁸

II. STATEMENT OF FACTS

Prior to its closure, the Valley Falls Station was located at 197 Broad Street, Pawtucket, Rhode Island. Petition, Exhibit 8, page 2. In its Final Determination, the Postal Service describes the Valley Falls Station as a Classified Station. Final Determination at 1. Before it was closed, the Valley Falls Station provided service to 150 post office box customers and to retail customers who purchased such products and services as stamps, money orders, registered and certified letters, and Express Mail. *Id.*

On September 21, 2009, customers learned of the possible closure of the Valley Falls Station when questionnaires were distributed to 178 post office box customers. On that same day, questionnaires were made available at the counter line to walk-in retail customers. *Id.* Seventy-nine questionnaires were returned. *Id.* The Postal Service states that of those customers expressing an opinion, nine were favorable, forty were unfavorable, and thirty expressed no opinion. *Id.*

On November 20, 2009, the Official Record was forwarded to Postal Service Headquarters together with a proposal to discontinue the Valley Falls Station. AR Item No. 21, Page 01.

⁷ United States Postal Service Notice of Filing and Application for Non-Public Status, July 15, 2011. The Administrative Record was filed in response to Commission Information Request No. 1, July 8, 2011.

⁸ Order Granting Motions, July 29, 2011 (Order No. 783). The Postal Service responded to the Commission's directive on August 2, 2011. United States Postal Service Response to Order No. 783, August 2, 2011. In addition, on August 4, 2011, the Commission granted a request by Petitioner for access to all non-public portions of the Administrative Record. Order on Motion, August 4, 2011 (Order No. 791).

Fifteen months later, on February 24, 2011, the Postal Service approved the Final Determination closing the Valley Falls Station. The decision was based in large part upon Postal Service findings: (1) that there had been a decline in retail transactions and revenues; (2) that postal services were available at other facilities in close proximity to the Valley Falls Station; and (3) that closure of the station would generate an estimated annual savings of approximately \$106,282. *Id.* at 4. The Final Determination also purported to consider and respond to various concerns expressed by postal customers in responses to the Postal Service's two rounds of questionnaires. *Id.* at 1-4.

One month after the proposal to close the Valley Falls Station was forwarded to Postal Service Headquarters, on March 25, 2011, a public notice was posted on the door of the Valley Falls Station advising customers that the Postal Service was "considering" consolidation of the retail and delivery operations of the Valley Falls Station. The notice invited customers to attend a community meeting at the Cumberland Town Hall on April 6, 2011, to voice their concerns. Petition, Exhibit 2. It does not appear from the record that at the time they attended the April 6, 2011 community meeting, customers were aware that the proposal to close the station had already been approved. At the April 6, 2011 meeting, a petition with over 400 signatures supporting continued operation of the Valley Falls Station was presented to Postal Service representatives. Petition, Exhibit 4.

On or about May 6, 2011, customers received letters advising them of the February 24, 2011 Final Determination.⁹

III. POSITIONS OF THE PARTIES

A. Petitioner and Others Supporting the Valley Falls Station

On June 27, 2011, Petitioner Watson filed a Participant Statement in lieu of an initial brief.¹⁰ In his Participant Statement, Petitioner Watson presents essentially five

⁹ Note 3 and accompanying text, *supra*.

¹⁰ Participant Statement, June 27, 2011 (Participant Statement).

arguments in support of his challenge to the closure of the Valley Falls Station: (1) that the Valley Falls Station is a "post office" and, as such, its closure is subject to review by the Commission (Participant Statement, Reasons 1-3); (2) that the Postal Service's 2009 questionnaire survey is stale, inconclusive, and does not adequately reflect the concerns or needs of the Valley Falls community (Participant Statement, Reason 4); (3) that the Postal Service does not understand the customers' concerns, needs, or cultural traditions (Participant Statement, Reason 5); (4) that the Postal Service failed to follow its procedures and misrepresented to customers the procedures applicable to closure of the station (Participant Statement, Reason 6); and (5) that the Postal Service has overestimated the economic savings that it projects will result from closure of the Valley Falls Station. (Participant Statement, Reason 6). Participant Statement at 2-16.

In addition to Petitioner's Participant Statement, two letters were filed within the time for participant statements and/or initial briefs in support of the continued operation of the Valley Falls Station.¹¹

B. The Postal Service

On July 18, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 737.¹² In its filing, the Postal Service once again reiterates its position that the Valley Falls Station is not a "post office" and is therefore not subject to 39 U.S.C. § 404(d) or 39 CFR § 241.3. *Id.* at 1-2. It also repeats its argument that the procedural requirements of section 404(d) do not apply to cases like this in which customers do not lose access to postal services. *Id.* at 2-3. Finally, the Postal Service argues that even if the requirements of section 404(d) applied, it has met those requirements because: (1) it has met all procedural requirements; and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the

¹¹ Letter of Michael D. Vinal, June 27, 2011 (Vinal Letter); and Letter of Patricia Chaston, June 27, 2011 (Chaston).

¹² Comments of United States Postal Service, July 18, 2011 (Postal Service Comments).

community, employees, and the economic savings from the discontinuance of the Valley Falls Station. *Id.* at 3-9.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.¹³

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to

¹³ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. As noted above, the Commission in this proceeding denied a request for suspension.

the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

V. ARGUMENT

A. The Commission Has Jurisdiction Over the Closure of the Valley Falls Station

The Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 404(d)(5). Docket No. A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 65-66. Accordingly, the Commission should reject the Postal Service's argument in this case that section 404(d)(5) does not cover the Valley Falls Station because it is a station.

Similarly, the Commission should reject the Postal Service's argument that the requirements of 39 U.S.C. § 404(d) do not apply when postal services remain available from postal facilities in close proximity to the facility being closed. The Postal Service bases its argument on the Commission decision in PRC Docket No. A2010-3.¹⁴ The argument is misplaced. In *East Elko*, the Commission, relying on its earlier decision in *Ecorse* that the procedural requirements of section 404(d) do not apply to a retail facility realignment within a community,¹⁵ dismissed an appeal on the grounds that the

¹⁴ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko*).

¹⁵ Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007 (*Ecorse*).

customers of the East Elko were not losing access to postal services in their community. *East Elko* at 7-8. This case does not involve the rearrangement of facilities within a community. The Postal Service's Final Determination by its own terms refers to its actions with respect the Valley Falls Station as a "closing." Final Determination at 1.

B. The Procedures Followed by the Postal Service Were Deficient

Petitioner argues that the Postal Service failed to observe proper procedures in reaching its decision to close the Valley Falls Station. Included among Petitioner's assertions are claims that: (1) at the time the decision was made to close the Valley Falls Station, the data collected by means of the 2009 Postal Service questionnaire was stale, inconclusive, and did not reflect the needs and concerns of the community; (2) the April 6, 2011 community meeting was not conducted in good faith in that customers attending the meeting were told that the decision to close the Valley Falls Station had not yet been made, when, in fact, the decision had been made over a month prior to the meeting; (3) the Postal Service failed to inform customers of their right to appeal the closure decision. Participant Statement, Reasons 4 and 6.

The Public Representative agrees with Petitioner. The integrity of the closure process depends heavily on the procedures used to make closure decisions. Customers have a right to expect that the procedures employed by the Postal Service will gather timely and accurate information; will provide the opportunity for timely and meaningful customer input; and will apprise customers, most of whom cannot be expected to be familiar with postal regulation, of their rights to contest unfavorable decisions. In this case, the procedures fell far short of what should be expected. The Final Determination was based upon questionnaire responses that were over a year old. The community meeting that was purportedly held to identify customer concerns was held after the Final Determination had been signed and thereby precluded consideration of customer comments at the meeting and the customer petition urging continued operation of the Valley Falls Station. Finally, no attempt was made to inform customers

of their right to appeal to the Commission. These glaring deficiencies clearly establish that the Postal Service's Final Determination was reached, in the words of 39 U.S.C. § 404(d)(5)(B), "without observance of procedure required by law...."

The Public Representative submits further that the procedures followed in this case for public involvement do not serve the broader general interest of fostering public confidence in the fairness of post office closings. The Commission has itself recognized that the failure to provide customers with a meaningful opportunity to comment on proposed post office closings will foster the "appearance that seeking customer comment is merely an afterthought" and, as such, only devalues customer input. See Comments of the United States Postal Regulatory Commission on Proposed Amendments to Post Office Consolidation and Closing Process, May 2, 2011 at 3-4 (Commission Comments).

For the foregoing reasons, the Commission should remand this case to the Postal Service to insure that the procedural rights of customers are enforced and that genuine consideration is given to the issues raised by the proposed closing.

C. The Decision to Close the Valley Falls Station Is Not Adequately Justified

The economic justification, which is at the heart of the Postal Service's decision to close the Valley Falls Station, is seriously flawed and requires further consideration and explanation by the Postal Service. In its current state, the purported economic justification does not constitute substantial evidence supporting the Postal Service's decision.

The Postal Service estimates annual savings of approximately \$93,475 from closure of the Valley Falls Station:

Clerk Salary (PS-6, Minimum)	\$42,413
Fringe Benefits @ 33.5%	14,208
Custodial	6,040
Inter-Station Transportation Costs	9,247
Rental Costs, Plus Utilities	38,402
Total Annual Costs	\$110,310

Less Cost of Replacement Service	- 4,028
Total Annual Savings	\$106,282

Final Determination at 4.

Over half of the projected savings are attributable to the salary and related benefits of the postal employee who worked at the station. However, as the Postal Service itself notes, the clerk at the Valley Falls Station was to be reassigned within the Pawtucket Post Office. *Id.* Without a more complete explanation by the Postal Service, it is unclear how, or in what sense, the salary and related benefits can be considered "savings" to the Postal Service. This practice of characterizing the salaries and benefits of reassigned employees as "savings" has previously been questioned by the Commission. Advisory Opinion at 58-59; and Commission Comments at 7-8. Unless and until the Postal Service provides a justification for considering the salary and related benefits of the reassigned Valley Falls clerk to be bona fide "savings," the annual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.

Similarly, it appears in this case that the reduction in custodial costs relied upon by the Postal Service is also questionable. According to the Vinal Letter submitted in this proceeding, the reduction in Custodial costs was the result of changes in the labor agreement covering the Valley Falls Station that ended outsourcing of custodial services. Vinal Letter at 1. Thus, the closing of the Valley Falls Station cannot be properly credited with the reduction of this cost. When the projected savings for salary, benefit, and custodial costs are eliminated, total projected annual savings are substantially reduced as follows:

Clerk Salary (PS-6, Minimum)	\$42,413
Fringe Benefits @ 33.5%	14,208
Custodial	6,040
Inter-Station Transportation Costs	9,247
Rental Costs, Plus Utilities	38,402

Total Annual Costs	\$ 47,649
Less Cost of Replacement Service	- 4,028
Total Annual Savings	\$ 43,621

Moreover, a further, and equally important, question is presented by the manner in which the Postal Service accounts for projected lease savings. According to the Final Determination, the projected annual lease and utility savings are \$38,402. Final Determination at 4. Of this amount, annual lease payments are currently \$30,201. Petition, Exhibit 8 at 2. The lease had no termination clause and was not scheduled to expire until April 30, 2013. *Id.* From August 1, 2011 (the first calendar month following closure of the Valley Falls Station), through April 30, 2013, the total obligation for basic lease payments would have been \$50,340.¹⁶ However, because the lease contained no termination clause, the Postal Service bought out the remaining term of the lease. Final Determination at 4. The buy-out payment amount was \$93,103. *Id.* Assuming this is the correct amount, its payment by the Postal Service would reduce the projected savings of \$106,282 in the Final Determination to approximately \$13,000. Compared to the adjusted savings total of \$43,621 (which assumes no savings for employee salaries and fringe benefits), the \$93,103 buy-out cost would wipe out any savings and, in fact, result in a loss of approximately \$50,000.

Related to the issue of whether closure of this post office will produce savings to the Postal Service is the question of whether the closure will otherwise leave revenues unaffected. The Postal Service appears to assume that closure of the Valley Falls Station will reduce expenses, but will not adversely affect revenues. The Commission has itself questioned whether such an assumption is justified and has urged the Postal Service to "develop a better methodology for analyzing potential salary and benefit cost savings from discontinued facilities." Advisory Opinion at 59 and 60; and Commission Comments at 7-8. If it were to be concluded that revenues would decline because of

¹⁶ Monthly payments of approximately \$2,517 (based upon annual rent obligation of \$30,201 shown on page 2 of Exhibit 8 attached to Petition) times 20 months, or \$50,340.

the closing, any such loss in revenues would justify a further downward adjustment in projected "savings."

For the foregoing reasons, the Public Representative submits that the projected economic savings, which constitute the principal basis for the decision to close the Valley Falls Station, have not been adequately explained or supported.

VI. CONCLUSION

The Postal Service's Final Determination to close the Valley Falls Station is seriously flawed; the procedures used by the Postal Service are contrary to law; the analysis fails to satisfy the arbitrary and capricious standard; and essential findings are not supported by substantial evidence. The Commission cannot affirm the closure determination in its present condition and should remand the case to the Postal Service to remedy the deficiencies identified above and in the submissions by Petitioner Watson and other participants.

Respectfully Submitted,

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